

Compliance Board Opinion 96-01

March 4, 1996

Mr. J. Michael Downes

The Open Meetings Compliance Board has considered your complaint of January 9, 1996, in which you suggest that the Mayor and Council of Rock Hall violated the Open Meetings Act in connection with the preparation of a resolution and ordinance presented as “new business” at a meeting on January 4, 1996. For the reasons stated below, the Compliance Board concludes that the Act was not violated.

I

Factual Background

In your complaint, you note that the Mayor and Council held a “workshop meeting” on Tuesday, January 2, 1996, which was open to the public. That same day, the Mayor and Council, sitting as the town’s Utility Board, also held an open meeting. At the latter meeting, you raised a question that was left unanswered at the time, because the Town Attorney was not present. You were told that the Mayor and Council would hold a closed meeting with the Town Attorney on Thursday of that week and would then answer your question in an open session scheduled for that day.

Your complaint expresses concern that an unannounced closed session was held between Tuesday, January 2 and Thursday, January 4:

At the monthly meeting on 4 January, 1996, I was placed first on the agenda, and the Town Attorney replied to the questions posed at the workshop. No “executive session,” as promised, had occurred prior to this meeting. In addition, later in this meeting, under “New Business,” extensive legislation was presented in the form of a Resolution (which was passed) and an Ordinance (which was introduced). Neither the Resolution nor the Ordinance had been formulated or discussed in any previous open meeting. Coincidentally, the Resolution formulated significant fees for the

copying of materials and publications, for some of which I had recently submitted a request under the Freedom of Information Act.

When I asked the Mayor if indeed there had been an unpublicized meeting between the Tuesday workshop and the Thursday regular meeting, I was told both by Councilmember Benson DuVal and Town Attorney G. Mitchell Mowell that Mowell had arrived at the Town Hall after the workshop meeting on Tuesday was adjourned and “*conferred with only two members of Council which is legal under the Open Meetings Act.*” This is difficult to believe, as there were two other councilmembers present in the building at this time. Further, this does not explain how and when the information presented in the Resolution and the Ordinance was formulated.

In a timely response on behalf of the Mayor and Council, Mayor Charles V. Stevens focuses on the events that occurred after the adjournment of the open meetings on Tuesday, January 2. The Mayor’s response summarizes these events as follows:

After the workshop meeting adjourned, the Town Attorney arrived at the Municipal Building. The Mayor and one Councilmember had, by that time, left the Council Chambers. Councilmembers DuVall and Jones met with the Town Attorney and Clerk/Treasurer. They discussed how to draft a resolution for presentation at the January 4 meeting. The Resolution dealt with setting fees for the retrieval and photocopying of documents. A decision was made that the Clerk would draft the resolution for review by the Town Attorney prior to presentation to the Mayor and Council. The Town Attorney and Councilmember DuVall left the Municipal Building together.

The ordinance, Mayor Stevens continued, was intended to rectify the omission of a fee schedule in the town's new zoning ordinance. "Upon realizing this problem, one Councilmember asked the Clerk to prepare an ordinance to 're-adopt' the fee schedule from our prior zoning regulations."

II

Analysis

The general mandate of the Open Meetings Act is that a "public body shall meet in open session." §10-505 of the State Government Article, Maryland Code. Conversely, if there is no "meeting" of a public body, the Act does not apply to the gathering.

A "meeting" cannot occur unless a quorum of a public body is convened: "'Meet' means to convene a quorum of a public body for the consideration or transaction of public business." §10-502(g). Less than a quorum of a public body is free to discuss public business in private, for the Act does not apply to those discussions. *See* Compliance Board Opinions 94-10 (December 2, 1994) and 94-8 (October 26, 1994).

On the facts available to the Compliance Board, the discussions at issue were not subject to the Act. The evident practice in Rock Hall, common to legislative bodies, is that a single member can initiate the drafting process for a legislative proposal. That is apparently what happened with regard to the ordinance on zoning fees. The discussion on the resolution imposing document fees evidently involved two councilmembers, rather than just one, but two still fall short of a quorum of the five-member Council. §10-502(k)(1). In the absence of a quorum, there could be no violation of the Open Meetings Act, for the Act was not applicable.

In your complaint, you observe that "if these and similar actions are not in violation of the letter of the Open Meetings Act, they certainly must violate its principles." And, indeed, portions of the Act's statement of legislative policy — for example, that citizens ought to be allowed to observe the "performance of public officials" — may be thought to support your observation.

Yet the reality of practical government is that public officials must have some space for thinking out loud and testing ideas outside the glare of public scrutiny. The General Assembly has chosen to create that space, as long as the

officials who are involved are less than a quorum and therefore incapable of acting as the public body itself. The Compliance Board views this accommodation as a reasonable one.

OPEN MEETINGS COMPLIANCE BOARD

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